

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

SCOTT L. BAENA, Litigation Trustee : 04-CV-12606-PBS
of the Lernout & Hauspie Speech Products, :
N.V. Litigation Trust, :
 :
Plaintiff, :
 :
v. :
 :
KPMG LLP and KLYNVELD PEAT :
MARWICK GOERDELER :
BEDRIJFSREVISOREN, :
 :
Defendants. :

**JOINT STATEMENT AND PROPOSED SCHEDULING ORDER
PURSUANT TO LOCAL RULE 16.1**

In accordance with the provisions of Local Rule 16.1(B), counsel have conferred concerning 1) an agenda for matters to be discussed at the scheduling conference set on March 4, 2005, at 3:00 p.m., 2) a proposed pretrial schedule for the case that includes a plan of discovery, and 3) consideration of consent to a trial by a Magistrate Judge. Counsel hereby submit this Joint Statement and Proposed Scheduling Order pursuant to Local Rule 16.1.

A. DISCOVERY

I. Plaintiff's Proposal

On December 22, 2004, the Court issued a Notice of Scheduling Conference which states that, "compliance with sections (B), (C) and (D) of Local Rule 16.1 to be of the utmost importance." Pursuant to section (B) of Local Rule 16.1, counsel for the parties have conferred. However, Defendants refused to even consider any proposal for a

pretrial schedule that includes a plan for discovery. Defendants have also declined to propose their own pretrial schedule as mandated by section (D) of Local Rule 16.1.

Plaintiff hereby submits that the [Proposed] Discovery Plan and Scheduling Order attached hereto as Exhibit A, outlines a discovery procedure will best achieve the goal of efficient coordination of discovery.

II. Defendants' Proposal

As the Court is aware, KPMG LLP has filed a motion to dismiss the action and believes that the claims asserted by Plaintiff against it are not actionable for multiple, independent reasons. Accordingly, KPMG LLP is of the view that embarking on discovery and/or enlisting the Court's assistance to establish a discovery schedule for this matter prior to the Court having an opportunity to adjudicate KPMG LLP's motion to dismiss would be inefficient and a waste of resources. KPMG LLP objects to the schedule proposed by Plaintiff. Given the difference of views between Plaintiff and KPMG LLP as to whether embarking on discovery and developing a discovery schedule at this juncture is appropriate, Plaintiff and KPMG LLP have not discussed Plaintiff's proposed schedule and the time periods reflected therein. If the Court concludes that it is appropriate to set a discovery schedule prior to addressing KPMG LLP's motion to dismiss, KPMG LLP reserves its right to propose an alternative schedule.

Defendant Klynveld Peat Marwick Goerdeler Bedrijfsrevisoren ("KPMG-B") joins in the position set forth by KPMG LLP and submits that until KPMG-B's pending motion to dismiss is decided, it is premature to establish a plan of discovery. KPMG-B reserves the right to propose an alternative discovery schedule, in the event the Court concludes that setting a schedule is appropriate.

B. TRIAL BY MAGISTRATE JUDGE

The parties decline at this time to consent to a trial by magistrate judge.

C. CERTIFICATIONS

Counsel for the parties also hereby certify that they have conferred with their clients with a view to establishing a budget for the costs of conducting the full course of the litigation and to consider the resolution of the litigation through the use of alternative dispute resolution programs. Counsel for the Defendants and for the Plaintiff shall file such certifications under separate cover.

Dated: February 28, 2005

Respectfully submitted,

DAVIS POLK & WARDWELL

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-and-

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EXHIBIT A

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DISCOVERY PLAN AND SCHEDULING ORDER

This 4th day of March, 2005, the parties having satisfied their obligations under Fed. R. Civ. P. 26(f), and the Court having conducted a pretrial; scheduling conference pursuant to Fed. R. Civ. P. 16 and LR, D. Mass. 16.1 and 26.2:

IT IS ORDERED that:

1. **Pre-Discovery Disclosures.** The parties shall exchange the information required by Fed. R. Civ. P. 26(a)(1) and LR, D. Mass. 16.2 and 26.2 by March 18, 2005.

- ## 2. Discovery.

- (a) All fact and non-expert discovery, including all written interrogatories, requests for production of documents, requests for admissions and depositions (“Fact Discovery”), shall be completed on or before nine (9) months after the entry of an order by this Court disposing of Defendants' motions to dismiss and requiring Defendants to file an answer to the Complaint.

(b) Disclosure of experts and reports from experts under Rules 26(a)(2) and 26(b)(4) of the Federal Rules of Civil Procedure shall be served by the party bearing the burden of proof with respect to the issue as to which the expert testimony relates on or before thirty (30) days after the deadline set forth in paragraph 2(a) (the “Initial Reports”).

(c) Responsive reports intended to contradict or rebut evidence on the same subject matter as the Initial Reports shall be served on or before thirty (30) days after the deadline set forth in paragraph 2(b).

(d) All expert discovery shall be completed on or before thirty (30) days after the deadline set forth in paragraph 2(c).

2. **Motions for Summary Judgment.** All summary judgment motions must be filed on or before thirty (30) days after the deadline set forth in paragraph 2(d).

3. **Status Conference.** In the absence of settlement, dismissal, or the entry of judgment, a further status conference to address issues, deadlines and/or set trial dates will be held on_____, 2005 at_____.m.

4. **Extending Deadlines.** Any deadline contained in this Scheduling Order may be extended by an order of the Court upon written motion for good cause shown.

Dated:_____, 2005.

UNITED STATES DISTRICT JUDGE